IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

76-1562

No.

ROSS Z. PIERPONT, M.D.,

Petitioner,

v.

MILTON B. ALLEN AND FREDERICK T. DEKUYPER

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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The Daily Record Co., Baltimore, Md. 21202

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Ross Z. Pierpont, M.D., the petitioner herein, prays that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Fourth Circuit entered in the above-entitled case on February 9, 1977.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit is unreported and is printed in Appendix A hereto, *infra,* page 1a. The judgment of the United States Court of Appeals for the Fourth Circuit is printed in Appendix A hereto, *infra,* page 1a. The Journal Entry of Judgment of the United States District Court for the District of Maryland, at Baltimore is printed in Appendix A hereto, *infra,* page 2a.

JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit (Appendix A, infra, 1a) was entered on February 9, 1977. The jurisdiction of the Supreme Court is invoked under the United States Constitution Article 3 §2 cl. 2; 28 USCS §1254(1).

QUESTIONS PRESENTED

The sole issue of law is that the United States Court of Appeals for the Fourth Circuit should have remanded the case to the District Court to give the Appellant, Pierpont, the opportunity to file an amended complaint, a complaint on which the record is clear and unequivocal as a good cause of action rather than summarily dismissing the appeal.

STATEMENT OF CASE

This is an appeal from the Judgment if the United States Court of Appeals for the Fourth Circuit of Richmond, Virginia, in which said Fourth Circuit found for the Appellant, Pierpont, as follows:

> "Per Curiam
>
> Upon consideration of the record and the appellant's brief, we conclude that the district judge erred by entering summary judgment without notice. See *Gellman v. Maryland,* 538 F.2d 603 (4th Cir. 1976) . . .".

This further appeal is now addressed to this Honored Court in an attempt to obtain justice which in this United States in today's legal maze is more and more elusive.

The truth, which is crying in anguish for attention in this case, is being continuously obscured and obfuscated by legal niceties.

Whatever happened to the simple direct factual evidence of right and wrong in the administration of justice? Obviously the Fourth Circuit Court of Appeals found that the lower Court committed error. Just as obviously the same Fourth Circuit Court of Appeals then erred by going above and beyond the great calling for justice by not remanding this case forthwith to the United States District Court of Maryland and to Judge Young for amendment of the pleadings. Instead, the Fourth Circuit Court of Appeals undertook to extricate all of their legal cohorts by deciding the merits of a case in the absence of the complaint and the facts. This Honorable Court evoked Rule 12 without ever allowing the appellants evidence the proper forum for presentation. This flies in the face of judicial procedure and ignores judicial fairness. The judicial process and the courts are the last bastion for the citizen against tyranny of the State.

Again I, as the appellant, Ross Z. Pierpont, M.D., ask this Honorable Court to reverse this jack rabbit judicial processing of a legitimate claim and to remand this case to the United States Court for the District of Maryland for a fair and open trial to a just conclusion on the facts fairly presented of actions of a prosecutor outside his official functions.

In closing may I say that this case, if it can ever reach the light of day, is one of res ipsa loquitur. Allen and Dekuyper on the facts available are both guilty as charged. Whether they can be saved by *Imbler v.*

Pachtman, 424 U.S. 409 (1976) decision is crushing but immaterial.

If the Honorable Justices will permit, this ordinary citizen would like to state his great reverence for the laws and justice of the United States. However, the *Imbler Pachtman* decision, virtually laying bare the entire unsuspecting United States citizenry to the prosecutors of this country with virtually no safeguards, accountability or control, flies in the face of the very justice your Honorable Court is sworn to uphold.

While the thought is repugnant in the extreme, this is the cornered position of decent citizenry of which revolutions rather than evolutions are made. When the caliber of the average prosecutor is known, as all of us know it only too well, shouldn't the *Imbler v. Pachtman, supra,* decision be reconsidered by this Honorable Court?

May I thank this Honorable Court for a fair review and decision.

REASONS FOR GRANTING WRIT

Denial of due process as guaranteed by the Fourteenth Amendment and Fifth Amendment to the Constitution.

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,

Ross Z. Pierpont, Pro Se,
5602 Enderly Road,
Baltimore, Md. 21212,
(301) 435-3663.

May 6, 1977.

I HEREBY CERTIFY, That on this 9th day of May, 1977, I mailed three (3) copies of the foregoing Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit to Charles C. Lee, Esquire, 1300 Tower Building, 222 E. Baltimore Street, Baltimore, Maryland 21202; Gerald A. Smith, Esquire, 711 St. Paul Street, Baltimore, Maryland 21202; Charles J. Josey, Esquire, 222 St. Paul Place, Suite 3506, Baltimore, Maryland 21202; Glen W. Bell, Esquire, Assistant Attorney General, One South Calvert Street, Baltimore, Maryland 21202; John Henry Lewin, Jr., Esquire, 1800 Mercantile Bank & Trust Building, Baltimore, Maryland 21201.

Ross Z. Pierpont

Sworn to before me this 9th day of May, 1977.

KATHLEEN C. BALL
NOTARY PUBLIC
BALTIMORE CITY, MD.

Kathleen C. Ball,
Notary Public

My Commission expires July, 1978.

APPENDIX A

Per Curiam Opinion of the United States Court of Appeals for the Fourth Circuit.

Judgment of February 9, 1977.

Journal Entry of Judgment of March 10, 1977, United States Court of Appeals for the Fourth Circuit. Verdict:

Accordingly, the order of the district court entering summary judgment is vacated and this case is remanded for the entry of an order of dismissal under Rule 12 for failure of the complaint to state a cause of action.

In The United States District Court
For The District of Maryland

Ross Z. Pierpont

v.

Milton B. Allen and Frederick T. Dekuyper

Civil No. Y-75-1846

ORDER

In accordance with the Order of the United States Court of Appeals for the Fourth Circuit dated February 9, 1977, it is this 14th day of February, 1977

ORDERED AND ADJUDGED:

1. That the Complaint be, and the same is, hereby DISMISSED pursuant to Rule 12(b)(6), Federal Rules of Civil Procedure, for failure to state a claim upon which relief can be granted.

2. That Judgment be, and the same is, hereby entered in favor of defendants against plaintiff, with Costs.

JOSEPH H. YOUNG,
United States District Judge.

United States Court of Appeals
For The Fourth Circuit

No. 76-2065

Ross Z. Pierpont,

Appellant,

v.

Milton B. Allen and Frederick T. Dekuyper,

Appellees.

Appeal from the United States District Court for the District of Maryland, at Baltimore. Joseph H. Young, District Judge.

Submitted November 27, 1976

Decided February 9, 1977.

Before HAYNSWORTH, Chief Judge, and CRAVEN and BUTZNER, Circuit Judges.

Ross Z. Pierpont, pro se; Charles C. Lee, Mitchell, Allen & Lee, Gerald A. Smith, Charles J. Josey, Glenn W. Bell (Assistant Attorney General), John Henry Lewin, Jr. for appellees.

PER CURIAM:

Upon consideration of the record and the appellant's brief, we conclude that the district judge erred by entering summary judgment without notice. *See Gellman v. Maryland*, 538 F.2d 603 (4th Cir. 1976).

It is also clear from the record that the district judge should have dismissed this case under Rule 12 for failure of the complaint to state a cause of action. Both the prosecutor and the grand juror, who are named as defendants, are immune from suit. *Imbler v. Pachtman*, 424 U.S. 409 (1976); *Martone v. McKeithen*, 413 F.2d 1373, 1376 (5th Cir. 1969).

Accordingly, the order of the district court entering summary judgment is vacated and this case is remanded for the entry of an order of dismissal under Rule 12 for failure of the complaint to state a cause of action.